

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ADAM JUDKINS,

Plaintiff

V.

CLARK COUNTY DETENTION CENTER,
et al.,

Defendants

Case No.: 2:22-cv-00878-APG-EJY

Order

[ECF No. 19]

On April 24, 2023, Magistrate Judge Youchah recommended that the following claims asserted by plaintiff Adam Judkins be dismissed with prejudice:

1. Fourth Amendment false arrest and false imprisonment claims against Officers Jaessen and Finley;
2. Sixth Amendment right to counsel claim;
3. 42 U.S.C. § 1983 claim against Clark County Detention Center;
4. All claims against Las Vegas Metropolitan Police Department (LVMPD) officers in their official capacities; and
5. Prison Rape Elimination Act claims against Sergeants Batu and Sergeant Kelly.

She also recommended that the following claims be dismissed without prejudice and with leave to amend:

1. *Monell* claim against the LVMPD;
2. First Amendment free exercise claim;
3. Fourth Amendment claim against Officer Martin;
4. Fourth Amendment claim against Sergeant Kelly;

1 5. Fourteenth Amendment claim for right to medical care; and

2 6. Intentional Infliction of Emotional Distress.

3 Finally, she recommended that I give Judkins until May 31, 2023 to file an amended complaint.

4 Judkins did not object. Thus, I am not obligated to conduct a de novo review of the
5 report and recommendation. 28 U.S.C. § 636(b)(1) (requiring district courts to “make a de novo
6 determination of those portions of the report or specified proposed findings to which objection is
7 made”); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc) (“the
8 district judge must review the magistrate judge’s findings and recommendations de novo *if*
9 *objection is made*, but not otherwise” (emphasis in original)). Nevertheless, I have reviewed
10 Judge Youchah’s Report and Recommendation, and I disagree with one of her recommendations.
11 Specifically, Judge Youchah recommends dismissal of claims against the LVMPD officers who
12 are sued in their official capacities because they are entitled to Eleventh Amendment
13 protection. ECF No. 19 at 14. However, LVMPD is not an arm of the state, its officers are not
14 officers of the state, and therefore these officers are not entitled to Eleventh Amendment
15 protection. But I agree with Judge Youchah that it is unclear whether the LVMPD officers are
16 being sued in their individual or official capacities. Plaintiff Adam Judkins should clarify this if
17 he files an amended complaint.

18 I THEREFORE ORDER that Magistrate Judge Youchah’s report and recommendation
19 **(ECF No. 19) is accepted in part.** The following claims are dismissed with prejudice:

- 20 1. Fourth Amendment false arrest and false imprisonment claims against Officers Jaessen
21 and Finley;
22 2. Sixth Amendment right to counsel claim;
23 3. Claim under 42 U.S.C. § 1983 against Clark County Detention Center; and

1 4. Prison Rape Elimination Act claims against Sergeants Batu and Sergeant Kelly.

2 The following claims are dismissed without prejudice and with leave to amend:

3 1. *Monell* claim against the LVMPD;

4 2. First Amendment free exercise claim;

5 3. Fourth Amendment claim against Officer Martin;

6 4. Fourth Amendment claim against Sergeant Kelly;

7 5. Fourteenth Amendment claim for right to medical care; and

8 6. Intentional Infliction of Emotional Distress.

9 Judkins has until June 7, 2023 to file an amended complaint. If Judkins does not file an amended
10 complaint by that date, then the case will proceed on the excessive force claim against Batu and
11 the claims against the LVMPD officers.

12 DATED this 17th day of May, 2023.

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14 ANDREW P. GORDON
15 UNITED STATES DISTRICT JUDGE
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